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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1420

JOSEPH F. YOUNG,

Petitioner,

v.

ADA M. SCOTT, et al.,

and

UNITED STATES OF AMERICA,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF ADA M. SCOTT IN OPPOSITION

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OPINIONS BELOW

The opinion of the District Court (Pet. 4a-8a) is reported at 307 F.Supp. 1005 (E.D. Va., Alexandria Div.). The opinion of the Court of Appeals (Pet. 12a-16a) is reported at 421 F.2d 143.

JURISDICTION

The decision and judgment of the court below were entered on January 16, 1970. The petition for a writ of certiorari was filed on April 13, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the racial discrimination practiced by Timberlake is prohibited by Title II of the Civil Rights Act of 1964 (42 U.S.C. Sec. 2000a).

2. Whether the racial discrimination practiced by Timberlake is prohibited by the Civil Rights Act of 1866 (42 U.S.C. Sec. 1981).

STATUTES INVOLVED

The pertinent provisions of the Civil Rights Act of 1964 (42 U.S.C. Sec. 2000a) and of the Civil Rights Act of 1866 (42 U.S.C. Sec. 1981, 1982) are set forth at pp. 3-4 of the petition.

STATEMENT OF THE CASE

A. PROCEEDINGS BELOW

The complaint herein was filed on October 6, 1965, by Ada M. Scott, a Negro, on behalf of herself, her daughter, Jacquelynne A. Scott[1] an infant, and others similarly situated. The complaint requested an injunction prohibiting Joseph S. Young[2] from following a policy and practice of racial discrimination in the operation of an outdoor recre-

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[1]The correct name of this party is Jacquelynne A. Scott. It is incorrectly stated in the petition to this Court as Jacqueline A. Scott.

[2]The correct name of petitioner is Joseph S. Young. It is incorrectly stated in the petition to this Court as Joseph F. Young.

ational facility known as "Timberlake", which he owns and operates in Fairfax County, Virginia. The claim to relief was based on the provisions of the Civil Rights Act of 1964 forbidding discrimination in places of public accommodation. 42 U.S.C. Sec. 2000a. On December 5, 1966, a consent decree was entered by the district court enjoining petitioner from excluding Negroes from the premises of Timberlake or from otherwise discriminating against persons on the basis of race, color, religion or national origin (Pet. 1a-3a).[3] The judgment was premised on the inclusion within the Timberlake establishment of an eating facility which served Timberlake patrons. Petitioner subsequently closed the eating facility and continued operating Timberlake on a racially discriminatory basis.

In August and September 1968, following judicial decisions announcing significant developments in the interpretation of federal laws concerning discrimination by establishments such as Timberlake, respondents moved in the District Court for further relief on the basis of provisions of the Civil Rights Act of 1964 (42 U.S.C. Sec. 2000a), and of the Civil Rights Act of 1866 (42 U.S.C. Secs. 1981, 1982). Petitioner opposed the granting of further relief, but the District Court granted the relief prayed for (Pet. 4a-8a). The Court held that Timberlake is a "place of entertainment" within the meaning of Section 201(b)(3) of the Civil Rights Act of 1964, and is thereby subject to the proscription of that Act against discrimination on the ground of race, color, religion or national origin in places of public accommodation. The District Court also held that the racial discrimination practiced by Timberlake violates the provision of the 1866 Act retained in 42 U.S.C. Sec. 1981. The District Judge (Lewis, J.) refused to stay the effectiveness of that court's order pending an appeal. Petitioner appealed, and on August 8, 1969, Judge Butzner of the

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[3]The correct date of entry of the consent decree was December 5, 1966. It is incorrectly stated in the appendix to the petition as December 5, 1964 (Pet. 2a).

Court of Appeals likewise denied petitioner's application for a stay of the District Court's order. On January 16, 1970, the Court of Appeals issued its decision affirming the District Court's decision in all respects (Pet. 12a-16a).[4]

B. FACTS

Timberlake is a privately owned recreation park located near Oakton in Fairfax County, Virginia, approximately 15 miles from the District of Columbia and the State of Maryland. It covers about 23 acres and includes two lakes with facilities for swimming, diving, canoeing, fishing, sunbathing and picnicking. It is open to the general public from mid-May through mid-September. It attracts about 65,000 persons per season and grosses about $50,000.

There are several floats or rafts located in the lakes, some of which have diving boards. Canoes may be rented by the hour. Inner tubes may be rented by the day. Patrons also engage in scuba and snorkel diving. The sandy beaches are used for sunbathing, and provide a vantage point for watching others engaged in aquatic and other recreational activities. Umbrellas are available for rent on a daily basis. There are numerous picnic tables located at various places around the lakes, which are rented to patrons. Patrons bring their own food and beverage, as none is sold on the premises.

Admission fees to Timberlake are $1.25 for adults and 50¢ for children. Ninety percent of the gross receipts come from admissions—the rest from equipment rentals.

Most of the patrons reach Timberlake by automobile. Although most come from Virginia, many come from Maryland, the District of Columbia and other states. Road signs are located in Virginia near interstate routes indicating the direction to Timberlake. Defendant has advertised

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[4]The facts set out herein are based on the District Court's findings as derived from petitioner's answers to interrogatories, as well as from exhibits introduced and made part of the record.

Timberlake in the *Washington Evening Star* on several occasions. This newspaper uses the United States mail facilities and is circulated generally in the Washington metropolitan area. Timberlake's canoes and umbrellas were purchased from merchants in the District of Columbia.[5]

Timberlake is and has been operated on a racially segregated basis, at least since mid-1964. Admission is secured through the admission booth upon paying the requisite fee. White members of the general public are routinely admitted. Negroes and other non-white persons are refused admission.

ARGUMENT

The Court of Appeals and District Court were plainly correct in holding that the racial discrimination practiced by Timberlake is proscribed by federal statutes. Under this Court's recent decisions, it is clear that both Title II of the Civil Rights Act of 1964, as well as the Civil Rights Act of 1866 apply to this business establishment.

1. As the Court of Appeals held, Timberlake is a "carbon copy" of the Lake Nixon facilities reviewed by the Court in *Daniel v. Paul*, 395 U.S. 298 (1969). In that case, the Court ruled that a recreational area in which patrons are not passive spectators, but direct participants, is a "place of entertainment" within the meaning of Section 201(b)(3) of the 1964 Act. Swimming, boating, sun bathing, picnicking—the same activities available at Lake Nixon—are also enjoyed by Timberlake's customers. In addition, here, as at Lake Nixon, the patronage of out-of-state customers, as well as the use of equipment originating out of the state, provide the required nexus with interstate commerce, thus

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[5]Petitioner incorrectly states that the "record is silent" concerning the source of its umbrellas (Pet. 14). In its answers to interrogatories, petitioner stated that it has 30 umbrellas available for patrons, which were purchased from the Quality Umbrella Shop, Washington, D.C.

making the 1964 Act applicable. In sum, this case, on its facts, is indistinguishable from *Daniel v. Paul*, and petitioner's assertion to the contrary is wholly without merit.

2. The alternative holding of the courts below—that Timberlake's discriminatory admission policy violates rights of Negroes secured by 42 U.S.C. 1981—is fully supported by this Court's recent decisions in *Jones v. Mayer Co.*, 392 U.S. 409 (1968) and *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969). Section 1981, as the District Court held, "on its face prohibits all private racially motivated conduct which denies or interferes with the Negro's right to enter into contracts to purchase that which is freely sold to white citizens" (Pet. 8a). Since, under common law authorities cited by the courts below, a ticket to a place of entertainment or recreation is a contract. Timberlake's denial of this contractual opportunity to Negroes unquestionably violates Section 1981.

3. There is no substance to petitioner's assertion that the District Court lacked authority to grant additional relief in this case. As that court noted, not only did it expressly retain jurisdiction under the 1966 consent order, but even if it had not done so, Rule 60(b)(6) of the Federal Rules of Civil Procedure permitted it to grant the additional relief requested upon proper showing. Clearly, changed law occasioned by new judicial decisions was such a showing. *System Federation No. 91 v. Wright*, 364 U.S. 642, 646-651 (1961); *Griffin v. State Board of Education*, 296 F.Supp. 1178, 1182 (E.D. Va., 1969); *United States v. Swift & Co.*, 286 U.S. 106, 114-115 (1932).

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CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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